HON'BLE SHRI G.S.SINGHVI, THE CHIEF JUSTICE
AND
HON'BLE SHRI JUSTICE C.V.NAGARJUNA REDDY

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WRIT PETITION No.36912 of 1998

Between:

Anjuman Ara Begum

… Petitioner

AND

State of Andhra Pradesh
Rep., by Secretary, (Health, Housing,
Municipal Administration & Urban
Development Department, Secretariat,
Hyderabad and four others.

… Respondents

; ORDER :

Counsel for the petitioner : Shri D.V. Sitharam Murthy
Assistant Solicitor General

Counsel for respondent No.1: Government Pleader for
Municipal Administration

Counsel for respondent No.2: Smt. Kalpana Ekbote

Counsel for respondent No.5: Shri E. Ajay Reddy

Dated: 28th August, 2007

Per C.V.NAGARJUNA REDDY, J.

This is a petition for grant of a declaration that G.O.Ms.No.788 (MA) dated 10.07.1981 and the building permit No.145/89 dated 24.12.1981 are illegal and unenforceable qua the petitioner.

The Facts:

The father of the petitioner by name Sri Mahaboob Ali Pasha was the owner of the land to an extent of Acs.10-20 guntas in Survey No.129/75/D5 situated at Road No.13 (old) (Road No.2 New), Banjara Hills. On the death of Sri Mahaboob Ali Pasha, the petitioner, her brothers and sisters became the owners of the property and are said to be in possession of the same in their own right. In the year 1981, Sri K.Madhusudana Reddy, Managing Partner of M/s. Merit Enterprises applied to respondent No.2 for grant of building permission for erection of building in premises bearing H.No.8-2-574/2/2/A, Banjara Hills, Road No.13. His application was rejected by the competent authority of the Municipal Corporation of Hyderabad (for short, 'the Corporation') vide proceedings bearing No.85/TP/A3/81/708 dated 14.05.1981 on the ground that the area on which the building is sought to be constructed falls in public or semi-public zone reserved for a college. Thereafter, respondent No.4 applied to the State Government (respondent No.1 herein) for grant of exemption from the application of the Zoning Regulation and to permit him to use the land for the purpose of construction of residential flats by relaxing the provisions of Hyderabad Municipal Corporation (Buildings) Byelaws 23 and 70 and Section 447 of the Hyderabad Municipal Corporation Act, 1955 (for short "the 1955 Act").

Respondent No.1, accepted the request of respondent No.4, and granted necessary exemption by change of land use from public and semi-public to residential and issued G.O.Ms.No.788 (MA) dated 10.07.1981. Thereafter, the Corporation granted building permission vide permit No.145/89 dated 24.12.1981 in favour of respondent No.4, who is the Managing Partner of respondent No.5. According to the petitioner, she came to know about these facts when respondent No.4 entered the premises in dispute and forcibly commenced construction thereon. The petitioner filed I.A.No.191 of 1998 in LGC.No.67 of 1997, which was already pending between her and other owners of the land and the third parties and when the Special Court under the Land Grabbing (Prohibition) Act, 1982 (for short "the 1982 Act") issued certain directions, then respondent Nos.4 and 5 filed writ petitions, which are pending before this Court.

The petitioner has questioned G.O.Ms.No.788, dated 10.07.1981 and the consequential permission granted by respondent No.2 by contending that the State Government does not have the power to change the land use and, in any case, this could not have been done without giving notice to her and other legal heirs of late Sri Mahaboob Ali Pasha.

On behalf of respondent No.2, Sri V.R. Satish Chandra, Chief City Planner, Municipal Corporation of Hyderabad has filed counter-affidavit. He has averred that the writ petition filed 17 years after the issue of the G.O. is liable to be dismissed on the ground of laches. Sri V.R. Satish Chandra has further averred that building permission was granted in view of the change of land use sanctioned by the State Government vide G.O.Ms.No.788, dated 10.07.1981 and the applicant was allowed to construct cellar floor, sub-cellar and another cellar floor for parking space, ground floor plus five upper floors for residential flats

by deleting the proposed two flats at fifth floor. He has then averred respondent No.5 sought regularization of certain deviations/unauthorized constructions and his application is pending.

Sri V.R. Satish Chandra, Chief City Planner, Town Planning Section, Municipal Corporation of Hyderabad filed a detailed additional counter-affidavit wherein it has been mentioned that after sanctioning of the building permission by respondent No.2, the Tahasildar, Golconda, under the instructions of the Joint Collector, Hyderabad issued notice dated 03.03.1983 under Section 7 of the Andhra Pradesh Land Encroachment Act, 1905 (for short "the 1905 Act") seeking eviction of respondent Nos.4 and 5 from the land in question on the ground that it was the Government land. Respondent No.5 filed Writ Petition No.1963 of 1983 in this Court questioning the said notice. In WPMP.No.2751 of 1983, this Court, while granting stay of dispossession, permitted respondent No.5 to file objections to the show cause notice and the competent authority was permitted to proceed with the enquiry and pass final orders. Respondent No.5 filed Writ Appeal No.188 of 1983 against the said order of the learned Single Judge and persuaded the Division Bench to suspend notice dated 16.03.1983 issued by the Tahasildar, Golconda. In the vacate stay petition fled by the Government, the Division Bench by its order dated 03.05.1983 directed that any construction made by respondent No.5 will be subject to the outcome of the writ appeal and that Government will be entitled to demolish the building, if it succeeds in the writ appeal. The Government filed SLP (Civil) No.8415 of 1983 before the Supreme Court and the Supreme Court granted interim direction to respondent No.5 to stop construction, pending disposal of the SLP. Writ Petition No.1963 of 1983 was finally allowed by the Division Bench of this Court and notice dated 03.03.1983 was

quashed and the Government was restrained from taking any proceedings under the provisions of the 1905 Act against respondent No.5 and they were also restrained from interfering with the construction being made on the disputed premises. In SLP (Civil) No. 149 of 1984 filed before the Supreme Court against the said order of the Division Bench, interim stay of the operation of the judgment was granted on 17.01.1984 by the Supreme Court and the 5th respondent was restrained from making further construction. After granting leave, the civil appeal registered as C.A.No.267 of 1984 was finally dismissed by the Supreme Court on 14.02.1996. Thereafter, respondent No.5 resumed construction. It is also averred that respondent No.5 applied for regularisation of certain deviations under the Building Regularization Scheme in the year 2000.

Sri S. Balakrishna, Deputy Director of Town Planning, Municipal Administration and Urban Development Department, Government of Andhra Pradesh has filed counter-affidavit on behalf of respondent No.1 wherein it has been stated that on the application of respondent Nos.4 and 5 for change of land use, respondent No.1 issued memo dated 05.06.1981 requesting the Special Officer, Municipal Corporation of Hyderabad (for short “the Corporation”) to offer remarks and based on the detailed report dated 22.06.1981 submitted by the Corporation duly recommending the change of land use from public and semi-public to residential use and thereafter, G.O.Ms.No.788, dated 10.07.1981 was issued. Sri Balakrishna has averred that as per the report submitted by the Corporation, the area under reference is predominantly residential in nature and that keeping in view the same, change of land use was sanctioned.

Sri P. Ravinder Rao, Managing Partner of respondent No.5 has

filed a detailed counter-affidavit, in which, apart from narrating the various events pertaining to the initiation of the proceedings by the Government under the 1905 Act, culminating in passing of the judgment of the Supreme Court, it is stated that respondent Nos.22 and 23 therein filed an application for impleading respondent No.5 as a party in LGC No.141 of 1989 and that the said application was dismissed by the Special Court directing deletion of 4090 square yards (equivalent to 3658 square meters), which is the subject matter of this writ petition, from the schedule of the said LGC and that the writ petition filed by the Government against the said order was dismissed by this Court with an observation that if respondent Nos.1 to 59 to the land grabbing case has any disputes inter se, they can settle the same in an appropriate proceedings. It is also averred in the counter-affidavit that the petitioner, except making a bald statement that the land in dispute is part of Acs.10-20 guntas of land in Survey No.129/75/D5 situate at road No.13, Banjara Hills, Hyderabad, has neither traced the source of title nor filed any documents in support of her claim of ownership over the land. Respondent No.5 has disputed the petitioner's assertion that she was not aware of G.O.Ms.No.788, dated 10.07.1981 for a long time. He has then averred that respondent No.5 commenced construction in the year 1981 itself though the work was stopped during the pendency of the litigation in the High Court and the Supreme Court and that the petitioner having knowledge of the commencement of the construction kept quiet for 17 long years before filing the present writ petition. Finally, respondent No.5 has pleaded that the writ petition is liable to be dismissed both on the ground of the petitioner's failure to establish her right over the subject property and the long and unexplained delay in filing the writ petition.

Sri D.V. Sitharam Murthy, learned counsel for the petitioner

submitted that the petitioner is a co-owner of the property along with her brothers and sisters and that respondent Nos.4 and 5 without any right encroached into their property. Learned counsel further submitted that the title to the property is yet to be finally adjudicated by the competent civil court and, therefore, respondent No.1 did not have the jurisdiction, power or authority to change the land use and respondent No.2 could not have issued building permission so as to facilitate construction of residential apartments.

Learned Government Pleader and the learned Standing Counsel for the Corporation (now Greater Hyderabad Municipal Corporation) and Sri E. Ajay Reddy appearing on behalf of respondent No.5 submitted that the writ petition should be dismissed as a vexatious piece of litigation and also on the ground that the petitioner has approached the Court after long delay of 17 years for which there is no explanation. They further submitted that the petitioner neither produced any proof of ownership nor explained the inordinate delay in filing the writ petition 17 years after the issue of said G.O. and, therefore, she is not entitled to relief under Article 226 of the Constitution of India.

We have carefully considered the respective submissions of the learned counsel and perused the material on record.

During the course of hearing, we repeatedly asked the learned counsel for the petitioner to show any document evidencing the title of his client over the land in dispute. In reply, Sri D.V. Sitharam Murthy fairly conceded that there is no conclusive proof of ownership of the petitioner. He, however, submitted that in LGC.No.141 of 1989, the Special Court has, vide judgment dated 10.06.2002, relegated the parties to the remedy before a civil court for adjudication of their rights and in the absence of such adjudication, the State Government could

not have allowed the application of respondent Nos.5 for change of land use and respondent No.2 could not have granted permission to raise construction.

In our opinion, the aforementioned submission of the learned counsel cannot be accepted. The very fact that the petitioner does not have any title over the property disentitles her from seeking this Court's intervention for quashing the change of land use sanctioned by the State Government and/or the building permission granted by the Corporation.

There is another fatal defect from which the present writ petition suffers. In her affidavit, the petitioner specifically pleaded that she, her brothers and sisters became the owners of the property in dispute on the death of her father Mahaboob Ali Pasha. If the petitioner, on her own showing, is merely a co-owner along with her brothers and sisters, it is difficult to comprehend as to how she could alone maintain the present writ petition, without joining all other persons, who allegedly have right over the property.

We are also of the view that the writ petition suffers from laches. Though the petitioner has taken pains to explain the delay by stating that the impugned G.O. was never published, we are not impressed by this explanation. In the counter-affidavit filed by respondent No.5 and also in the additional counter affidavit filed by Sri V.R. Satish Chandra, Chief City Planner, it has been categorically stated that following the impugned G.O., respondent No.2 sanctioned the building permit on 24.12.1981 and that respondent No.5 commenced the construction immediately thereafter. Though the petitioner filed a reply affidavit, she has not denied the said averment. It is therefore quite evident that the petitioner was very much aware of the commencement of construction in the year 1981-82 itself and yet she failed to take immediate remedial

measures against respondent Nos.4 and 5. Therefore, there is no escape from the conclusion that the writ petition has been filed after inordinate delay of 17 years.

For the aforementioned reasons, the writ petition is dismissed.

C.V. NAGARJUNA REDDY, J

G.S.SINGHVI, CJ

Date: 28.08.2007.

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